



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 3, 2021

Ms. Amy B. Thomas  
Counsel for the City of Gatesville  
Haley Olson  
100 North Ritchie Road, Suite 200  
Waco, Texas 76712

OR2021-30669

Dear Mr. Thomas:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the “Act”), chapter 552 of the Government Code. Your request was assigned ID# 915577.

The City of Gatesville (the “city”) received a request for information pertaining to a specified investigation. The city claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”<sup>1</sup> Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in the *Industrial Foundation* decision. *Id.* at 683. Generally, only highly intimate information that implicates the privacy of an individual is

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<sup>1</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. See Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

withheld. However, in certain instances, the entirety of the requested information must be withheld to protect the individual's privacy.

There are two victims at issue in the submitted information (the "first victim" and the "second victim"). The city informs us the requestor is a representative of first victim. Section 552.023(a) of the Government Code provides a governmental body may not deny access to a person or a person's representative to whom the information relates on the grounds that the information is considered confidential under privacy principles. Gov't Code § 552.023(a); *see* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, the requestor has a right of access to the first victim's private information pursuant to section 552.023 of the Government Code. However, we are unable to determine whether the requestor is also a representative of the second victim. Thus, we must rule conditionally. If the requestor represents the second victim, then the requestor also has a right of access to the second victim's private information pursuant to section 552.023. However, if the requestor does not represent the second victim, then she does not have access to the second victim's information on that ground. In that situation, withholding only the identity of the second victim or certain details of the submitted information from this requestor would not preserve the common-law right of privacy of the second victim. Accordingly, to protect the privacy of the second victim, the city must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy, unless the requestor has access to this information pursuant to section 552.023.

Section 552.108(a) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the information at issue would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). The city states the submitted information relates to a pending criminal investigation or prosecution. Based on this representation, we conclude the release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in the *Houston Chronicle* decision. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle* decision). Thus, if the requestor has a right of access to second victim's private information pursuant to section 552.023 of the Government Code, then the city must release basic information, but may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, if the requestor does not have a right of access to the information pertaining to the second victim pursuant to section 552.023 of the Government Code, then the city must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor has a right of access to second victim's private information pursuant to section 552.023 of the Government Code, then the city must release basic information, but may withhold the remaining information under section 552.108(a)(1) of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/jm

Ref: ID# 915577

Enc. Submitted documents

c: Requestor  
(w/o enclosures)